IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16083 of 2007
With
SPECIAL CIVIL APPLICATION No. 19643 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBHAI PARBATBHAI CHANDERA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
SCA No.16083 of 2007 MR HEMANG H.PARIKH for Respondent(s) : 1, 2 and 3.
SCA No.19643 of 2007 MR HEMANG H.PARIKH for Respondent(s) : 1, 3 and 4.
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR KIRTIDEV R DAVE for Respondent(s) : 2,
MR RAHUL K DAVE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 29/11/2007

ORAL JUDGMENT

1. Both these petitions emanate from the same order, namely, order dated 23rd March, 2007 made by the District Education Officer and hence, are taken up for hearing together. RULE in both the petitions. The learned advocates appearing for respective respondents in both the petitions are directed to waive service.

2. In Special Civil Application No.16083 of 2007 the petitioner, who is an employee of respondent No.2-School, has prayed for following reliefs:

> *"(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dtd. 23.03.2007 passed by the District Education Officer and further be pleased to direct the respondent Government Authorities to pay the salary and the arrears of the petitioner forthwith with interest since there is a delay on their part;*

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent authorities to pay the amounts as mentioned in point Nos.(i) to (v) in para-14, along with interest, within a stipulated time as may be decided by this Hon'ble Court;

(C) Pending admission, hearing and final disposal of this writ petition, Your Lordships may be pleased to direct the respondent authorities to fix the pay of the petitioner and submit the same before this Hon'ble Court within a period of 15 days;

(D) Be pleased to pass such other and further reliefs as may be deemed just and proper by Your Lordships in the facts and circumstances of the case”

3. In Special Civil Application No.19643 of 2007 the Trust, who is running the High School, has prayed for following reliefs :

(A) Your Lordships be pleased to admit this petition.

(B) Your Lordship be pleased to hold that the order of the respondent No.3 on the direction from the respondent No.2 Dt.23-03-2007 is bad in law, ultra vires and unconstitutional and it be quashed and set aside.

(C) Your Lordship be pleased to hold that the salary and other dues of the respondent No.4 be paid as per the order of the respondent No.3 Dt.20-11-2006 by the State.

(D) Your Lordship be pleased to stay the operation of the order of the respondent No.3 Dt.23-03-2007 pending admission, hearing and final disposal of this petition.

(E) Your Lordship pleased to grant any other relief/s as may be deemed fit in the facts and circumstances of the case.

4. The admitted facts as stated by the District Education Officer in his Affidavit-in-reply dated 18th October, 2007 read as under:

"6. I say and submit that the facts of this petition are that the petitioner was appointed as Assistant Teacher in the Sarmanbhai Maru High School at & Post: Nagichana, Tal: Mangrol, District : Junagadh. Thereafter, the petitioner was appointed as Principal in the School. One day the major compliant has been filed against petitioner and so petitioner was placed under the suspension by an order vide dated 11.02.1996. After the suspension order the petitioner was arrested and remained in a custody from 01.03.1996, and later on the petitioner was acquitted on 01.01.1999. Thereafter, the petitioner went to resume the duty on the very next day. Thus, the petitioner was reinstated in the school by the management of the school with effect from 02.01.1999.

7. I further say and submit that petitioner was in a custody and hence the petitioner was not paid the salary and thereby, the petitioner has filed an application No.346/01 before the Gujarat Secondary Education Tribunal. The Tribunal by order dated 18.08.2003 allowed the application. The Tribunal has passed the following main order:

"The respondent school shall sent the supplementary bill for the payment of 50% salaries of the applicant for initial six months within one week and the District Education Officer shall pass the same within 15 days. With regard to the difference of subsistence allowance for rest of the period i.e. from 11.08.1996 to 01.01.1999 District Education Officer shall send the proposal as per the G.R. Dated 07.04.1978 and Code rule 69.8 to the Commissioner of Schools. The C.O.S. shall take decision regarding subsistence allowance for the rent of the period and pass orders within 3 months. If the Commissioner decides that the salary is admissible for the purposes of grant then he shall direct the District Education Officer to release the grant for the said period. If he comes to the conclusion that under the rules the said salary is required to be paid by the school then he shall direct the school. With regard to the grievance of the applicant about non-fixation of salaries as per the 5th Pay Commission recommendations. It is direct that the respondent school as early as possible complete the fixation work and release the arrears. No order as to costs".

5. It appears that pursuant to the order made by the Tribunal the respondent-Authorities were required to determine as to who was liable to make payment to the petitioner for the period of suspension; the State Government or the School ? Vide impugned order dated 23rd March, 2007, the District Education Officer has made an order whereunder it is stated that the School Management is liable to make the payment to the employee, Shri Rambhai Chandera, after deducting the entire leave that may be available to the employee.

6. Both the employee and the School Management have challenged the said order. According to the School Management in light of the Government Resolution dated 07.04.1978, the School Management cannot be fastened with any liability and the entire liability rests with the State Government. Elaborating on the submission, it was submitted that as per the said resolution, the School Management would become liable only if the delay in reinstatement can be ascribed to the School Management, or the delay for the suspension period

continuing can be ascribed to the School Management. That in the present case, admittedly, on the immediately next day of the acquittal of the employee, the employee was reinstated by the School Management and therefore, there is no liability to make any payment in so far as the School Management is concerned.

7. On behalf of the employee, the submission was to the effect that there is no provision for deducting the leave at the credit of the employee while making payment and regardless of whether the payment is to be made by the State Government or the School Management none of the said Authorities can be permitted to deduct the leave as directed in the impugned order dated 23rd March, 2007 made by the District Education Officer.

8. Upon Notice being issued the respondent-Authorities have appeared through the learned AGP and the District Education Officer has tendered Affidavit-in-reply dated 18th October, 2007. In

paragraph No.9 of the said Affidavit the circumstances in which the impugned order came to be made have been narrated in the following words:

> *"9. It is respectfully submit that as per the G.R. Dated 07.04.1978 the proposal regarding the subsistence allowance has been sent to the Commissioner of School. I state and submit that petitioner has made representation vide letter dated 03.10.2006 requesting the authority and in reference to the letter, the District Education Officer has fixed the hearing on 17.11.2006. In fact, the District Education Officer has heard all parties and passed an order dated 20.11.2006 and holding that as per the Government Resolution dated 07.04.1978, the petitioner is not fault and therefore as per the Tribunal direction dated 18.08.2003 the amount is required to be paid. I state and submit that the Commissioner of School has fixed up the hearing on 26.02.2007 and passed an order dated 12.03.2007 and then after, immediately our office has passed an order vide dated 23.03.2007".*

9. The learned AGP has stated, under instructions of the Officers present in Court, Shri

A.D.Suthar, Auditors Group-I and Mr.M.A.Datroja, Assistant Education Inspector, that the school in question is a 100% grant-in-aid school and hence, the responsibility rests with the State Government to make the payment. The learned AGP was not in a position to point out any provision of law or any other legal basis in support of the impugned order fastening the liability on the School Management and providing for deducting all the accrued leave. In fact, the learned AGP also could not dispute that Resolution dated 7th April, 1978 would be applicable to the facts of the case and in light of the factual averments made in paragraph No.6 of the Affidavit-in-reply School Management could not be faulted in any manner having reinstated the employee on the immediately next day after the day of acquittal of the employee concerned.

10. In the aforesaid circumstances, it is apparent that the District Education Officer has framed the order dated 23.03.2007 at the behest of the Commissioner as stated in paragraph No.9 of the Affidavit-in-reply. The impugned order dated 23rd

March, 2007 does not have any legal foundation, either of a provision of law or any other pronouncement. In fact, the impugned order is against the Government Resolution dated 07.04.1978. Hence, the only course open is to quash and set aside the impugned order dated 23rd March, 2007. Accordingly, the impugned order dated 23.03.2007 is quashed and set aside.

11. The respondent-Authorities are directed to make payment of the entire remaining amount to the employee-petitioner of Special Civil Application No.16083 of 2007 within a period of four weeks from today without deducting the accrued leave.

12. Both the petitions are allowed accordingly. Rule made absolute in both the petitions to the aforesaid extent. There shall be no order as to costs.

(D.A.MEHTA, J.)

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